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Attorneys for Defendants BARRY JAY STONE
and STONECREST SQUARE AUTO CENTER,
LLC

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

CHRIS KOHLER,

Plaintiff,

V._t

STONECREST GAS & WASH, INC., dba
STONECREST SHELL; STONECREST
PLAZA, LLC; BARRY JAY STONE;
STONECREST SQUARE AUTO CENTER,
LLC; VINCENT MANNO, TRUSTEE OF THE
VINCENT D. MANNO TRUST AGREEMENT
DATED APRIL 23, 1991; CAROL ANN
CARLETON, TRUSTEE OF THE CAROL A.
CARLTON TRUST AGREEMENT DATED
MAY 2, 1991; FILOMENA R. BUCKINGHAM,
TRUSTEE OF THE FILOMENA R.
BUCKINGHAM TRUST AGREEMENT
DATED MAY 2, 1991; AMELIA M. LUCAS,
TRUSTEE OF THE FILOMENA R.
BUCKINGHAM TRUST AGREEMENT
DATED MAY 2, 1991; FILOMENA R.
BUCKINGHAM, TRUSTEE OF THE AMELIA
M. LUCAS TRUST AGREEMENT DATED
MAY 2, 1991; AMELIA M. LUCAS, TRUSTEE
OF THE AMELIA M. LUCAS TRUST
AGREEMENT DATED MAY 2, 1991; LARRY
M. LUCAS, TRUSTEE OF THE LUCAS
FAMILY TRUST U/D/T DATED JANUARY
22, 1991; and AMELIA M. LUCAS, TRUSTEE
OF THE LUCAS FAMILY TRUST U/D/T
DATED JANUARY 11, 1991.

Defendants.

Case No. 08CV0105L(NLS)

ANSWER TO COMPLAINT

1 COME NOW Defendants BARRY JAY STONE and STONECREST SQUARE
2 AUTO CENTER, LLC, and, answering solely on behalf of themselves, and severing
3 themselves from their Co-Defendants, and in answer to Plaintiffs' Complaint on file
4 herein, admit, deny, and allege as follows:

5 **ANSWER TO COMPLAINT**

6 1. Answering the allegations of Paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 13, 14, 15, 17,
7 18, 20, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 35, 36, 37, 38, 39, 41, 42, 43, 44, 45, 46,
8 47, 49, 50, 51, and 52 of the Complaint, these answering Defendants deny each and every
9 allegation contained in said paragraphs.

10 2. Answering the allegations of Paragraph 8, these answering Defendants lack
11 sufficient information or belief to admit or deny the allegations of said paragraph and,
12 basing their denial upon said lack of information and belief, deny generally and
13 specifically each and every allegation contained in said paragraph.

14 3. Answering the allegations of Paragraphs 10, 11, 12, and 23, these answering
15 Defendants are informed and believe that the allegations stated therein are inaccurate and,
16 basing their denials upon said information and belief, deny generally and specifically each
17 and every allegation contained in said paragraphs.

18 4. Answering the allegations of Paragraphs 16, 33, 40, and 48, these answering
19 Defendants incorporate their previous denials and other responses to the paragraphs
20 referenced therein as if each was set forth herein again *in haec verba*.

21 5. Answering the allegations of Paragraph 19 of the Complaint, these
22 answering Defendants admit that the term "readily achievable" is defined as "easily
23 accomplishable and able to be carried out without much difficulty or expense." Except as
24 expressly admitted herein, these answering Defendants deny each and every remaining
25 allegation contained in said paragraph.

26 6. Answering the allegations of Paragraph 21 of the Complaint, these
27 answering Defendants admit that Kohler alleges removal of purported architectural
28 barriers is readily achievable, but not that this is indeed the case. Except as expressly

1 admitted herein, these answering Defendants deny each and every remaining allegation
2 contained in said paragraph.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 7. As and for a first affirmative defense, these answering Defendants allege, on
6 information and belief, that Plaintiff is pursuing the within action in bad faith, and without
7 giving these answering Defendants any opportunity to address or correct the purported
8 violations upon which Plaintiff's action is based.

9 **SECOND AFFIRMATIVE DEFENSE**

10 8. As and for a second affirmative defense, these answering Defendants allege
11 that Plaintiff was negligent in and about the events underlying his Complaint and that,
12 under the Doctrine of Comparative Negligence, Plaintiff is barred, or proportionally
13 foreclosed, from any recovery.

14 **THIRD AFFIRMATIVE DEFENSE**

15 9. As and for a third affirmative defense, these answering Defendants allege
16 that Plaintiff is barred from recovery herein under the Doctrine of Unclean Hands.

17 **FOURTH AFFIRMATIVE DEFENSE**

18 10. As and for a fourth affirmative defense, these answering Defendants allege
19 that the purported statutory authority under which Plaintiff premises liability is
20 inapplicable to the within matter.

21 **FIFTH AFFIRMATIVE DEFENSE**

22 11. As and for a fifth affirmative defense, these answering Defendants allege
23 that all applicable governmental authorities approved the subject construction and granted
24 appropriate certificates of completion, and that Defendants' reliance thereon bars Plaintiff
25 from any recovery herein.

26 **SIXTH AFFIRMATIVE DEFENSE**

27 12. As and for a sixth affirmative defense, these answering Defendants allege
28 that Plaintiff impliedly waived the claims upon which he sues herein.

SEVENTH AFFIRMATIVE DEFENSE

13. As and for a seventh affirmative defense, these answering Defendants allege that Plaintiff and/or his counsel is/are vexatious litigant(s) and that, as a condition precedent to going forward with the within action, said parties must post security to the credit of these answering Defendants and that, until such security is posted, the instant matter shall be stayed and that, if such security is not posted, the instant matter shall be dismissed with prejudice.

WHEREFORE, these Answering Defendants pray that:

1. The within action be dismissed with prejudice and judgment be entered in their favor;
 2. That Plaintiff take no relief from the within action;
 3. That Defendants receive their attorney's fees and litigation expenses;
 4. For costs of suit;
 5. That Plaintiff and his counsel be ordered to post security for Defendants' attorney's fees and costs, that the instant matter be stayed until such security is posted, and that it be dismissed if Plaintiff and/or his counsel decline to post such security; and
 6. For such other relief as the Court may deem just and proper.

Dated: February 15, 2008

VAUGHN & VAUGHN

By:

DONALD A. VAUGHN

Attorneys for Defendants BARRY JAY STONE
and STONECREST SQUARE AUTO CENTER,
LLC

1 **Kohler v. Stonecrest Square Gas & Wash, Inc., et al.**

2 United States District Court Case No. 08cv0105 L NLS

3 **CERTIFICATE OF SERVICE VIA CM/ECF SYSTEM**

4 I hereby certify that on **February 15, 2008**, I electronically filed the document entitled:

5 **ANSWER TO PLAINTIFF'S COMPLAINT**

6 with the Clerk of the United States District Court for the Southern District of California, using the
7 CM/ECF System. The Court's CM/ECF system will send an e-mail notification of the foregoing
8 filing to the following parties and counsel of record who are registered with the Court's CM/ECF
9 System:

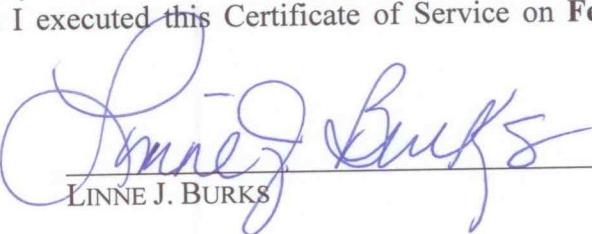
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15 Tel: (530) 895-3252 / Fax: (530) 894-8244
16 E-mail: usdcso@hubslaw.com

17 *Counsel for Plaintiff*

18 Pursuant to the CM/ECF system, registration as a CM/ECF user constitutes consent to
19 electronic service through the Court's transmission facilities.

20 I declare under penalty of perjury of the laws of the United States of America that the
21 foregoing is true and correct, and that I executed this Certificate of Service on **February 15,**
22 at San Diego, California.

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29 LINNE J. BURKS